

In the Court of Appeals of the State of Alaska

James M. Marquez,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-11925**

Order

Remand to the Trial Court

Date of Order: **March 11, 2021**

Trial Court Case No. **3AN-12-03395CR**

Before: Allard, Chief Judge, Harbison, Judge, and Mannheimer,
Senior Judge.*

The remaining issue in this case involves Marquez's pre-trial motion seeking discovery of medical records pertaining to an alleged abortion that the victim purportedly underwent shortly before the homicide. In our previous order to the superior court, we made clear that any record of an abortion performed shortly before the homicide would be material to Marquez's defense at trial because it would tend to support Marquez's heat of passion claim and tend to prove that Marquez was telling the truth about what the victim said to him. We therefore directed the superior court to determine whether there was reason to believe that the requested medical records existed at the Anchorage health care providers named in Marquez's motion.

On remand, the superior court concluded that Marquez had not offered any reason to believe that the requested records existed at the identified facilities. We

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

disagree with this conclusion. Although we share the superior court's concerns about not permitting a "fishing expedition" into the victim's medical records, we conclude that there is a portion of Marquez's discovery request that is sufficiently tailored and narrow in scope to justify an *in camera* review by the superior court.

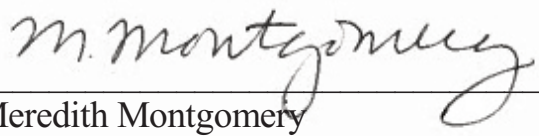
At trial, Marquez testified that the victim told him in December 2011 that she was pregnant. Marquez also testified that he noticed that the victim was gaining weight and that he believed she remained pregnant until April 9, 2012, when she told him that she had terminated the pregnancy. Marquez and the victim both lived in Anchorage, and there were only two medical facilities that provided abortions in Anchorage—Planned Parenthood and the Alaska Women's Health Center. In our view, these combined facts are sufficient under the circumstances of this particular case to warrant an *in camera* review of any medical records that may exist for the victim at those two facilities during the relevant time period (*i.e.*, from January 1, 2012 through April 9, 2012). However, we agree with the superior court that Marquez is not entitled to a search of the victim's medical records outside this time frame or at any other medical facility.

Accordingly, we direct the superior court to issue an appropriate order under Criminal Rule 16(b)(5) for *in camera* production of any records of an abortion performed on the victim from January 1, 2012 through April 9, 2012 at either Anchorage Planned Parenthood or the Alaska Women's Health Center in Anchorage. If any such records are provided to the court, they shall be sealed, and the court shall review them *in camera*. If the *in camera* review corroborates Marquez's claim that the victim had an abortion during this time frame, the superior court shall notify the parties of this fact, and

the date of the abortion, and the parties shall brief the question of whether Marquez's defense was prejudiced by the absence of this corroborative evidence. If no such records exist at either of the two facilities, or if records exist but the *in camera* review of those records does not corroborate Marquez's claim that the victim had an abortion between January 1 and April 9, 2012, then the superior court shall notify us of this fact, and this case shall be closed.

Entered at the direction of the Court.

Clerk of the Appellate Courts


Meredith Montgomery

cc: Judge Peterson
Trial Court Clerk - Anchorage
Distribution:

Email:
Jura, Emily L., Public Defender
Wendlandt, Diane L.